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Barnes & Thornburg
11 South Meridian Street
Indianapolis, IN 46204

EXAMINER

GREENE, DANIEL L

ART UNIT PAPER NUMBER

3621

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/806,794

Applicant(s)

BASS, LARRY D.

Examiner

Daniel L. Greene

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 86-138 is/are pending in the application.

4a) Of the above claim(s) 87,89-93,98,99,101,104,105,107,108,110-112 and 114-138 is/are withdrawn from consideration.

- 5) ☐ Claim(s) _____ is/are allowed.

- 6) ☒ Claim(s) 86,88,94-97,100,102,103,106,109,113 is/are rejected.

- 7) ☐ Claim(s) _____ is/are objected to.

- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Status of Claims

2. Claims 87,89-93,98-99,101,104-105,107-108,110-112 and 114-138 have been canceled and claims 86,88,94-97,100,102-103,106,109, and 113 have been amended in the amendment filed 8/22/2005. Thus, claims 86-138 remain pending and are presented for examination.

Response to Arguments

3. Applicant's arguments filed 22 August 2005 have been fully considered but are not persuasive.

In reference to the "vehicle identification number of the vehicle" [VIN] the Applicant has presented similar arguments in the previous actions that the "vehicle identification number of the vehicle" provides the limitation that renders the application unique, original and nonobvious. The Examiner submits that the VIN is the description of a form of data that represents an item. The VIN is nonfunctional descriptive material and is not functionally involved in the steps recited.

As an example:

A claim could be written:

receiving a vehicle identification number of the vehicle or receiving a serial number of the vehicle or receiving the item number of the vehicle or receiving (some form of data) identifying the vehicle.

The receiving some form of data to identify the vehicle step would be performed the same regardless of the identifying data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to receive any type of data identifying the vehicle because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

Further, the Examiner submits that the invention presented by the Applicant is not rendered unique, nonobvious, and original because it is involved with vehicles. The term "vehicle" could be replaced with the term "item, package, merchandise, etc." and the steps of the methods claimed would still be relevant. The receiving of identifying data for the item, the transmitting the identifying data, the assigning the identifying data and the updating based on the identifying data of the item, would still be performed. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to receive any type of data identifying the vehicle/item because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

As per previous Office Actions:

Applicant argues that the package identification number disclosed by Jones is not “predetermined vehicle identification data associated with the vehicle”. Applicant further argues that the package identification number disclosed by Jones is simply the destination address of the package. Examiner agrees that the package identification number disclosed by Jones is not vehicle identification data, however, the package identification number disclosed by Jones is used to identify and locate a package that is being requested for delivery by a user (0120). Examiner submits that it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to use the package identification number to locate/identify any type of package that is being delivered, whether it be a vehicle or any other type of package.

4. Applicant further argues that the “predetermined vehicle identification data” exists apart from the claimed invention and is not generated as a step thereof. Applicant asserts that this differs from typical systems used by common package delivery companies such as UPS in that the “package identification numbers” used by such companies are not “predetermined” nor are they received by the delivery company. Examiner agrees somewhat that “package identification numbers” used by delivery

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companies are not "predetermined", however, examiner submits that this information is merely descriptive material and is only used to identify the package or vehicle being delivered. The "package identification number" disclosed by Jones is entered by the user requesting delivery and serves the same purpose, which is to identify the package being delivered (0120). Accordingly, examiner submits that it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to use any type of descriptive data or information to identify the package being picked up and delivered; whether it is predetermined or generated.

5. OFFICIAL NOTICE

With regards to claims 90-91, and 107-108, the common knowledge declared to be well known in the art is hereby taken to be admitted prior art because the Applicant either failed to traverse the Examiner's assertion of Official Notice or failed to traverse the Examiner's assertion of Official Notice adequately. The admitted prior art is wherein the moving step includes driving or towing from the first location to the second location.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 86-95, 98-102, 114-119, 122-131 and 134-138 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shah et al, U.S. Patent No. 5,636,122 in view of Jones, U.S. Patent Application Publication No. US 2003/0233190 A1.

As per **Claim 86:**

Shah et al disclose a method for delivering a package from a first location to a second location, the method comprising:

- receiving origination data identifying the first location (Figure 10; Col. 13 line 55-Col. 14 line 15) and destination data identifying the second location (Figure 10; Col. 13 line 55-Col. 14 line 15);

Shah et al fail to disclose vehicle identification data for identifying which vehicle is to be picked up and delivered and verifying the identification of the vehicle at the second location. Jones discloses a dispatch and delivery management system and teach wherein a user may enter an order for a package to be delivered and wherein the order includes package identification numbers to identify which package is to be picked up and delivered (0095; 0110; 0120). It would have been obvious to one having ordinary skill in the art at the time of applicant's invention to modify the method of Shah et al and include package identification numbers in the package delivery order to ensure that the correct package is picked up and inspected/verified at the delivery location by the delivery service. Verifying that the correct package is being delivered is a typical step carried out by delivery personnel in order to ensure the correct package is being delivered to the correct recipient.

Shah et al and Jones disclose the pickup and delivery of packages and Jones discloses using package identification numbers to identify the package, however, Shah et al and Jones fail to explicitly disclose that the identification data is predetermined and that the package being delivered is a vehicle. However, the various types or elements of data that can be used to identify a package or vehicle such as identification data is directed to non-functional descriptive material and is not functionally involved in the steps recited. Various types or forms of data used for package or vehicle identification would be used the same regardless of the descriptive material since none of the steps explicitly interact therewith. Limitations that are not functionally interrelated with the useful acts, structure, or properties of the claimed invention carry little or no patentable weight. Thus, this descriptive material will not further distinguish the claimed invention from the prior art in terms of patentability, see *In re Ngai*, 70 USPQ2d 1862 (CAFC 2004). Also see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would also have been obvious to a person of ordinary skill in the art at the time of applicant's invention to use any type or form of data to identify the package or vehicle because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

Shah et al further discloses:

transmitting the identification data, origination data, and destination data to a second computer. Col. 15, lines 45-65.

assigning the identification data to a driver with the second computer. (Figure 5; Col. 10, lines 50-52; Col. 15, lines 14-30).

updating the second computer based on the identification data after the item has been moved to the second location. Col. 15, lines 45-65.

As per claim 88:

Shah et al does not expressly show the identification data includes the year of the vehicle, the make of the vehicle, the model of the vehicle, and the color of the vehicle. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The receiving an identification number of an item step would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to receive identification data of an item be it the year of the vehicle, the make of the vehicle, the model of the vehicle, and the color of the vehicle or the type , kind or any type of descriptive data because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

As per Claim 94:

Shah et al fail to explicitly disclose scanning the bar code. Jones discloses using bar codes affixed to the package and scanning the bar code (0119, 0120). It would have been obvious to one having ordinary skill in the art at the time of applicant's invention to modify the method of Shah et al and include affixing bar code labels to the packages being delivered as taught by Jones so that the packages can be easily identified and handled.

As per Claim 95:

Shah et al further disclose generating a time stamp for indicating when a customer orders a transaction and data regarding the order is received (Figure 10; Col. 14, lines 50-55; Col. 16, lines 33-36).

As per Claim 100:

Shah et al further disclose wherein the terminal includes a terminal for generating and transmitting order confirmation (Col. 13, lines 10-45).

As per Claim 102:

Shah et al does not expressly show the data being recorded includes information on the vehicle's fuel, information on the vehicle's lubricant, etc.

However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The recording of data

step would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to record any type or kind of data they felt relevant to the item be it the vehicle's fuel, information on the vehicle's lubricant, etc. because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

Shah et al further disclose recording information on the time when the vehicle was delivered at the second location (Figure 11).

Claims 96-97 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shah et al, U.S. Patent No. 5,636,122 and Jones, U.S. Patent Application Publication No. US 2003/0233190 A1 as applied above and further in view of Smith et al, U.S. Patent No. 6,430,496 B1.

As per Claims 96-97:

Shah et al further disclose information regarding the dispatching of vehicles such as vehicle ready time, delivery time, service type, vehicle type and other information and further disclose that other forms of data may also be captured depending upon the

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particular application (Col. 13, lines 30-33; Col. 14, lines 50-55). Shah et al fail to explicitly disclose wherein the information includes whether the vehicle can be driven or whether a key for operating the vehicle is available. Smith et al disclose a fully automated vehicle dispatching system and further teach wherein the system may store information regarding the vehicle such as whether it is available or not (Col. 1, lines 55-65; Col. 11, lines 34-40; Col. 14, lines 20-24) which indicates that the vehicle can be driven. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Shah et al and include information regarding the status of the vehicle such as whether it can be driven or not as suggested by Smith et al. This would enable the dispatchers to only dispatch vehicles which are available and can be driven.

Furthermore, the various types or elements of data that can be stored or maintained by the system such as whether the vehicle must be towed or whether a key for operating the vehicle is available are directed to non-functional descriptive material and are not functionally involved in the steps recited. The steps of storing or maintaining various types or forms of data would be performed the same regardless of the descriptive material since none of the steps explicitly interact therewith. Limitations that are not functionally interrelated with the useful acts, structure, or properties of the claimed invention carry little or no patentable weight. Thus, this descriptive material will not further distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would also have

been obvious to a person of ordinary skill in the art at the time of applicant's invention to store or maintain by type or form of data because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

Claims 103, 106, 109 and 113 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shah et al, U.S. Patent No. 5,636,122 in view of Jones, U.S. Patent Application Publication No. US 2003/0233190 A1 and Byford, U.S. Patent No. 6,220,509 B1.

The Applicant has amended the claims to include that the second location is an automobile auction facility. As previously presented, the description of a generic item i.e. automobile auction facility to describe a location is a nonfunctional descriptive term in reference to the method. The managing of the delivery of an item to a second location would be performed the same way whether the second location was a automobile auction facility, or a used car lot, or a car dealer, or a persons home etc.

Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to manage the delivery of an item [vehicle] regardless of the type/name given to the second location because such data does not functionally

relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

As per Claims 103 and 106:

Shah et al disclose a method for managing the delivery of a package from a first location to a second location comprising:

Shah et al also fail to specifically disclose generating a data label based on the predetermined vehicle identification data, applying the label to the vehicle at the first location, scanning the data label at the second location and updating the status information displayed on the host computer based on the scanning step. Byford discloses a parcel trace system and further teach generating a data label based on the package identification data, applying the data label to the package at the first location and scanning the label at the second location (Col. 2, lines 25-46 and 54-65; Col. 3, lines 53-65) and updating the status information displayed on a host computer based on the scanning step (Col. 2, lines 35-60; Col. 3, lines 10-42). Accordingly, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Shah et al and include the ability to generate a data label, apply the label to the item being delivered, scan the label upon delivery of the item and update the status of the delivery based on the scanning step as taught by Byford. Byford provides motivation by indicating that this would enable a customer expecting delivery of the package to track the status/location of the package while in transit (Col. 3, lines 38-50; Col. 4, lines 13-25).

As per Claim 109:

Shah et al further disclose wherein the updating step includes updating the status information with data indicative of the time when the package was delivered to the second location (Figure 11).

As per Claim 113:

Shah et al further disclose recording information about the item delivered at the second location (Figure 11).

Shah et al does not expressly show the data being recorded includes information on the vehicle's fuel, information on the vehicle's lubricant, etc.

However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The recording of data step would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to record any type or kind of data they felt relevant to the item be it the vehicle's fuel, information on the vehicle's lubricant, etc. because such data does not functionally relate to the steps in the method claimed and because the

subjective interpretation of the data does not patentably distinguish the claimed invention.

Conclusion

12. **Examiner's Note:** Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant.

Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel L. Greene whose telephone number is 571-272-6707. The examiner can normally be reached on M-Thur. 8am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Daniel L. Greene
Examiner
Art Unit 3621

10/26/2005

Daniel L. Greene
PRIMARY EXAMINER